

Summaries of Bi-weekly Meeting Issues with TOA Since June 1, 2010

June 2, 2010

LACMTA Westside Extension

In follow-up to our conversation at the last bi-weekly meeting on the LA Westside corridor extension of the Metro Red line subway, we would like to give you an update on the materials LACMTA provided to FTA on the 30/10 plan during the quarterly meeting held last week. Unfortunately, the information did not include a prioritization of the projects in the plan. Recall that LACMTA would like to submit a request to enter PE sometime this fall. LACMTA has indicated it plans to request entry into PE for the entire 9.3 mile corridor and would like to complete NEPA and have a Record of Decision for the entire project. However, due to cash-flow issues with Measure R sales tax revenues, LACMTA would probably not be able to undertake the full 9.3 mile project in its entirety and would instead construct the project in phases, starting with a 3.1 mile minimum operating segment (MOS). FTA typically prefers to approve an MOS into PE, rather than a full length project that we know will not ultimately become the project covered by the FFGA. However, on multiple occasions we have allowed a full length project into PE that was later reduced to an MOS (Orlando, Northstar CR, Second Ave Subway, etc.) The team recommends allowing LACMTA to apply for entry into PE for the full 9.3 mile extension and conducting NEPA on the entire corridor. If the full 9.3 mile project rates successfully, it could move into PE and then later be cut down to a MOS if necessary.

Orlando SunRail

The NS team recommends notifying FDOT that FTA will not move forward with any FFGA readiness reviews until all third party agreements are finalized and complete. **We would like to discuss with you whether that notification should done in writing or verbally.** As you know, there are outstanding items to be addressed with regard to STB, Amtrak, and CSX. In addition, per the direction you gave at our last bi-weekly discussion of this project, FTA has told FDOT that the wording in the interlocal funding agreements must be changed to adequately address our concerns about ongoing operations funding. The supplemental EA is nearing completion and FTA will soon be asked to sign the FONSI. Once the FONSI is signed, FDOT will have automatic pre-award authority to purchase vehicles. The NS team feels we should caution FDOT against purchasing the vehicles under the pre-award authority until such time as the third party agreements are completed.

Houston University Corridor

FTA and METRO are completing the response to the comments received on the University Corridor FEIS, and expect to publish the NEPA Record of Decision in the near future. Upon issuance of the ROD, Houston METRO will have automatic pre-award authority to purchase vehicles with their own funds. Currently, the DBOM vehicle contract includes an option for METRO to purchase the vehicles needed for the University Corridor. **We would like to discuss with you options for cautioning or prohibiting METRO from moving forward with the vehicle procurement with their own funds under pre-award authority in light of the ongoing Buy America investigation of the DBOM contract.**

Charlotte Response to Request to add South Corridor Improvements to Northeast Corridor Project

Per the email sent to you by Susan Borinsky on Friday May 28th, **we would like to get your opinion on whether we should respond verbally or in writing denying CATS' written request to add scope to the Northeast Corridor project to cover costs for retrofitting the existing South Corridor.** A written letter may be viewed as an FTA "policy" statement and will likely be shared by CATS and/or Jeff Boothe with others in the transit community--which might curtail your options in the future.

June 16, 2010

ARC

There are two items to discuss:

1. The NJ congressional delegation has requested a meeting with FTA staff this week to go over the steps remaining to advance to an FFGA. We understand you met with Senator Martinez last week on the ARC project, and were hoping you could provide a brief synopsis of what was discussed. In addition we would like your input on what to discuss in the staff level meeting with the delegation.
2. NJT is requesting that FTA approve a \$200 million New Starts grant to be used for upfront insurance payments NJT must make for work covered by the ESWA. The insurance coverage has been in effect since May 5, 2010, and NJT must make a payment within 45 days (by June 21). The insurance program and procurement is structured such that NJT is entitled to a full refund of the program's risk fund (less any pending or past claims) and a pro-rata share of the premiums should the project be delayed, suspended, or cancelled. Jim Weinstein understands that if FTA were to send the grant to DOL this week, given the Congressional release process, it is unlikely the grant can be awarded by June 21 date. He has assured us that if the grant is in process, NJT will have no problem front ending the money to meet the payment deadline. He also understands that if NJT is to drawdown the federal money for the insurance, NJT needs to show that it has expended an amount that is equivalent to the requisite match.

Sacramento

There are two items to discuss:

1. Per your discussion with Congresswoman Matsui last week, Sacramento RT would like to revisit whether FTA will grant a LONP for construction of a parking garage near the proposed Consumes River College LRT station. The estimated cost of the parking garage is \$38 million. Under a lease/leaseback arrangement, the garage would be constructed and financed by the Consumes River College with RT having access to the facility through a lease and joint use agreement. Recent construction bids have been significantly lower than the engineers' estimate.
2. Sacramento RT would like FTA to award a grant for \$4.4 million in lapsing New Starts funds to be used for the purchase of right-of-way and utilities relocation. Approving a grant for the acquisition of right-of-way prior to the project's approval into final design would go against an internal policy established in 2007 and distributed via an internal memo to the FTA field offices (see attached document).

Houston North and Southeast Corridor LONPs

Houston METRO staff approached TPE at last week's APTA rail meeting and requested that FTA reconsider METRO's March and April 2010 LONP requests for additional critical path roadway and bridge construction work and early construction on a rail operations center. METRO indicated they will have to demobilize contractors if they do not receive these LONP approvals in the very near future. The LONP requests for roadway and bridge construction work are for \$5,002,990 for the North Corridor and \$2,595,759 for the Southeast Corridor for a combined total of \$7,598,749. The rail operations center LONP request is for \$1,596,936. METRO understands FTA is still reviewing the Buy America investigation materials, but is hoping its submission at the end of last week would satisfy FTA's data needs and allow FTA to reconsider granting the LONP approvals.

June 30, 2010

Orlando—Positive Train Control

Issue: The regulation requiring Positive Train Control (PTC) was issued after the Orlando Commuter Rail Project was approved into final design. Thus, the project budget does not include funds to comply with the PTC requirement. FDOT asked FTA if additional New Starts funds could be provided to help cover the cost of PTC, and FTA said "no" in order to maintain consistency with the policy that New Starts funds are capped at approval to enter final design. Florida DOT is now proposing to implement PTC compliance before the FRA deadline of 2015 but *after* the revenue operations date of 2013, and maintain these costs as separate from the project budget. FDOT has described PTC compliance as essentially "plugging in" hardware to the signals and railcars that will be designed to be plug-in ready. However, if the funds are not included in the FFGA project budget, FTA will not be able to directly monitor whether or not FDOT has the financial capacity to fund PTC costs. (Even though FRA is responsible for PTC compliance, FTA is statutorily required to determine that the project and the existing system can be operated and maintained for at least 20 years into the future).

Recommendation: The New Starts team recommends the following course of action:

- The costs of PTC compliance will be maintained outside of the FFGA project cost.
- The PMOC will review FDOT's plan to implement PTC to determine if FDOT's cost estimate (\$5 million) to comply with the PTC requirement is adequate.
- FTA's FMOC will ensure as part of the financial capacity assessment that FDOT has the funds available in its cash flow to fund the cost of PTC.

St. Paul – Time Sensitive: Central Corridor LRT LONP Request

Issue: The Metropolitan Council (MC) submitted a \$20 million LONP request to issue a Limited Notice to Proceed (LNTP) for the Civil East Construction contract (roadway excavation, curb and gutter work, sidewalk work, traffic signal installation, retaining walls, etc). The MC would like to undertake this work to "lock in" the competitive low bids that were received and minimize potential schedule and cost risks to the overall project budget. The MC will not issue a full NTP for the full \$200 million Civil East contract until December 31, 2010, after receipt of a Full Funding Grant Agreement.

The MC sent FTA some information on the LONP several months ago, but did not finalize the submission until the end of last week. The MC would like the LONP by the end of this week or the beginning of next week as they wish to issue a LNTP to proceed by July 6. The LONP package will begin circulating in FTA this week for approval.

FYI: FTA staff is working to move as expeditiously as possible on the LONP.

Access to the Region's Core – 1) Timing of Risk Assessment, and 2) Response to Letter from Sen. Menendez

Issue #1: FTA staff is working with NJT to complete the ARC risk assessment. Region II has requested additional information for the risk assessment from NJT, which is expected within two weeks. The projected timeframe to complete the risk assessment was mid-August, but TPM and the Region are conferring to see if and how an abbreviated timeframe is possible.

FYI: FTA staff will inform you about the anticipated timeframe to complete the risk assessment and determine a range for project cost.

Issue #2: Yesterday, TPE received a letter from Senator Menendez to the Secretary and you, dated June 14th, in which the Senator expressed alarm about learning from his meeting with you that ARC won't be ready for an FFGA by Oct. 1, and indicating that he would like to convene another meeting soon.

Question: Can you please advise on the response to the Senator's letter? The response is due on July 2nd.

Update on Norfolk LRT Project Cost Increase

FYI: FTA staff has agreed on a project budget and is arranging a meeting of Region III, TPM and TCC to discuss amendment of the FFGA.

Sunrail Grants - Lapsing

As a follow up to a very brief discussion that we had during the EMT retreat last week, I mentioned that there were a couple of earmarks lapsing for projects related to the Orlando Commuter Rail. The earmarks in the amount of \$1.9M are for 2 of the commuter rail stations (Maitland and Winter Park) that would be used by both SunRail and Lynx (bus system). The source of funding is 5309 Bus and Bus Facility. These funds were earmarked in SAFETEA-LU, subject to annual appropriations each year, but in every year of SAFETEA-LU.

FDOT has submitted a grant amendment to add these funds to a Bus and Bus Facility grant for CONSTRUCTION activities, which construction is not allowed (pursuant to the FTA's Final Design Approval letter). In prior years (2006 and 2007), they have applied for these same earmarks, but only used the funding for PE and Design; now they want them for construction. We have placed conditions on prior year grants, which precluded FDOT from drawing down funds until the FFGA is approved.

I bring this up because of the sensitivity of obligating funds when projects are not ready to go... **a recent finding from the OIG when they were in Region IV.** This is exactly what they were criticizing. However, I also recognized that allowing Congressman Mica's earmarks to lapse would also be of concern when FDOT is trying to advance this project and work through the AMTRAK issue.

I spoke briefly to Dorval, too, while in DC and suggested that by awarding the grants (saving Mica's earmarks) with conditional language included may be a win-win solution. In the event it becomes obvious that the FFGA is not going to move forward, we could de-obligate the funds.

You will hear more about this at the New Starts Call tomorrow. **Unfortunately, Region IV will be in an ALL-Day Retreat at Bannings Mill and will not be on the call.** We will follow up with Robyn to see how you would like for us to proceed tomorrow evening.

July 14, 2010

Portland Milwaukie LRT - New Starts Share for Entry Into Final Design

Issue: TriMet's schedule for receiving approval into Final Design currently shows mid-October, in order for TriMet to meet the limited construction window in July 2011 in the Willamette River when fish are not spawning. If this timeframe cannot be met, the project schedule would be delayed at least one year until the "fish window" occurs again. The current financial plan, cost estimate, and project schedule provided to FTA in April that we have been reviewing are based on TriMet's assumption that FTA will be providing a 60% New Starts share (even though we told TriMet to assume only 50% when we approved them into preliminary engineering). FTA has completed its risk assessment and found that the current cost and schedule are reasonable if FTA is willing to provide a 60% share. As you know from your meeting with Fred Hansen and Neil McFarlane in late May, TriMet stated that the schedule would be delayed 1-2 years if FTA only provides a 50% share because a referendum would need to be passed authorizing additional bonding, which is not likely to happen until Nov 2012. The delay would escalate construction costs and increase financing costs, but how much is currently unknown.

Question: At the meeting with TriMet in May, you told them not to expect greater than a 50% New Starts share, but you indicated this was not your final answer but rather simply all that could be accommodated within FTA's current budget constraints. At that time you did not want to make them update the official project schedule and cost, you simply stated that the FEIS must discuss the possibility that FTA might only provide a 50% share, which has been done. May FTA now tell TriMet to update its official project schedule, cost estimates, and financial plan to reflect a 50% share? If we do that, the urgency with trying to get Final Design approval completed by October goes away. As you know, the New Starts share is "locked in" at the amount requested at entry into Final

Design, so we should not be processing a Final Design request with a 60% share unless we are willing to provide 60%.

Orlando Commuter Rail – Time Sensitive: Lapsing Bus and Bus Facility Earmarks

Issue: SAFETEA-LU included \$7.9 million in bus and bus facility earmarks for intermodal facilities related to the Orlando commuter rail project. Three of the earmarks worth \$2 million will lapse at the end of FY 2010 if the grants are not sent to the Department of Labor by next week. In the two previous fiscal years, FTA obligated a total of \$3.8 million in grants for design and construction of the intermodal facilities. Only \$300,000 of those funds have been drawn down because the design and construction of the intermodal facilities are related to the commuter rail stations. One of those grants conditioned the drawdown of funds on resolution of the issues pertaining to the railroad agreements for the SunRail project. The recent OIG audit of TRO-IV pointed out the inactive status of these grants and questioned why they were not closed.

Question: We raised this issue with you at a previous bi-weekly meeting. You indicated you wanted time to think about it before coming to a decision. Because of the end of fiscal year deadlines for sending grants to DOL, we need an answer this week on how to proceed. Should FTA obligate the funds that will lapse at the end of this fiscal year in a grant with a conditional drawdown as was done in previous years, extend the earmarks, or let the funds lapse?

NJ Access to the Region's Core – Updates on Risk Assessment Schedule and \$200 Million Grant

Issue #1: Risk Assessment Schedule Update

Since we last briefed you on the schedule for the risk assessment, NJT has said that they will need an additional three days to provide the information we asked for to complete the risk analysis. Hence, the PMOC will not be able to provide the cost range to FTA until Thursday, July 29. The earliest we could brief you on the cost range would be Friday, July 30.

For Discussion: We would like to discuss the timing of the briefing as well as the schedule for follow-on activities during the month of August.

Issue #2: Update on \$200 Million Grant

NJT has submitted an application in TEAM for a \$200 million grant for their FY 2010 New Starts earmark. The \$200 million would be used to pay the insurance premium for an Owner Controlled Insurance Policy (OCIP). We told the NJ Congressional Delegation that we would approve the grant once we confirm that the funds are not irrevocably committed. Region 2 has just received new information from NJT confirming that in the first year only \$120 million is recoverable. After the first year, no funds can be recovered by NJT if the ARC project does not go forward.

Question: How do we want to proceed in light of this new information?

Information Items – Upcoming Approvals

Minneapolis Central Corridor LONP – has it been signed?
Mesa LRT Extension PD approval
Jacksonville Final Design approval

July 28, 2010

Denver EAGLE Project FFGA Schedule

The New Starts team will provide you with an updated schedule for execution of the FFGA. When we last spoke with you, you asked the team to look into ways to shorten the schedule based on information we could glean from the executed PPP contract, discussions with RTD, and the amount of risk transferred to the private sector. The team would like to discuss some proposals for shortening FTA review times with you.

NJ Access to the Region's Core – Updates on Risk Assessment Schedule and \$200 Million Grant

Issue #1: Risk Assessment Schedule Update

As you requested at our last meeting, we would like to discuss the risk assessment schedule with you in more detail and find out when you would be available this week or next to discuss the preliminary risk assessment results. Here is a proposed schedule of activities.

- Thursday, July 29th or during the first week in August - the New Starts team briefs you on the preliminary cost range and most likely cost
- Week of August 9th: NJT and FTA staff meet to review risk ranges and reach understanding on the data and assumptions that drive the ranges
- Week of August 16th: The New Starts team briefs you on the outcome of the meeting with NJT and the final range of costs

After the above activities take place, we believe the following steps would need to occur before an FFGA could be awarded. We are not proposing dates for these activities because their timing depends on how much clearance within DOT is required before we share final numbers with NJT and also on how long NJT takes to complete certain steps.

- Develop final risk range
- Regional Administrator briefs head of NJT/PA/Turnpike Authority on range
- Locals consider financing implications of new cost range
- Administrator agrees with Governor on number to be used in the FFGA and when financial plan can be submitted
- NJT prepares financial plan that supports that agreed upon baseline cost estimate
- FMO reviews financial plan
- FTA and NJT prepare FFGA documents
- OST/OMB clearance
- Hill review period

- FFGA execution

Issue #2: Update on \$200 Million Grant

At our last meeting, we talked about the insurance premium not being returnable to NJT after one year. You asked us to look into what grant scope items could be recoverable. We would like to provide you with an update on this issue.

Houston FFGAs

We understand the Buy America investigation of METRO's procurement approach for light rail vehicles for the North Corridor and Southeast Corridor projects may be nearing completion. To the extent this issue can be discussed, we would like to get some details on when that may occur and talk through next steps for the Houston projects so that the New Starts team can be prepared. For example, there are currently three outstanding LONP requests for: (1) North Corridor road and bridge work (\$5 million); (2) the expansion of the existing Rail Operations Center in the North Corridor (\$1.5 million); and (3) Southeast Corridor road and bridge work (\$2.5 million). If the Buy America investigation is resolved in a satisfactory manner, how and when might FTA move forward with the LONPs and an FFGA? On July 15, 2010, METRO provided regional sales tax revenue forecasts through June 2010 that were prepared by a local economist. Should TPE direct our Financial Management Oversight Contractor to incorporate this information into a revised financial capacity assessment report?

St. Paul-CCLRT FFGA Schedule

The Metropolitan Council has submitted an FFGA application to FTA and hopes to receive an FFGA by December 31, 2010. FTA is currently reviewing the application, but believes this schedule may be difficult to meet because of uncertainty regarding when the Met Council will complete all third party agreements, something we typically require before we will execute an FFGA. The Met Council has not yet executed agreements with 1) the University of Minnesota (UM) to build the LRT line through the UM's East Bank campus and construct a pedestrian/transit mall on Washington Avenue near the UM and 2) the Minnesota DOT on the property acquisition for the operations and maintenance facility in downtown St. Paul and an agreement to allow the LRT line to operate across the Washington Avenue Bridge. (The UM and the State DOT jointly own the bridge). Assuming a 30-day concurrent OST/OMB review and the statutory 60-day congressional review period, FTA would need to forward the FFGA documents to OST in late September in order to execute the FFGA by the end of December. The New Starts team wanted to discuss with you some of the challenges with meeting the Met Council's schedule for an FFGA by the end of the calendar year.

Status Update - Other Items

- Upcoming Approvals
 - Mesa PD Approval (small starts project)
 - Arlington County PE approval (exempt project)
 - Pawtucket PE approval (exempt project)
 - Jacksonville FD approval (exempt project)
 - Assembly Square FD approval (exempt project)

- Austin, PCGA application received
- Lapsing New Starts Funds

August 12, 2010

Orlando Central Florida Commuter Rail Transit Project – Agreement with CSX

Florida DOT and CSX are negotiating a Master Project Agreement that will describe operational, safety, and capacity improvements along the “S Line” that FDOT will fund to improve freight rail service throughout the State of Florida. In concert with the “S Line” improvements, and as part of a larger plan to improve statewide freight service, FDOT is also purchasing the “A Line” corridor from CSX that will be used for the SunRail commuter rail service. CSX will be moving some of its freight service from the “A Line” to the “S Line” once the improvements along the “S Line” are made. The total cost of the statewide freight rail improvement program is more than \$600 million and will be paid for entirely with State funds.

FDOT and CSX have always maintained to FTA that the freight rail improvement program is separate from the SunRail project. Thus, FTA did not require that the cost to acquire the CSX right of way be included in the total project cost for the SunRail project. In addition, FTA did not include an analysis of the impacts of moving freight to the “S Line” in the original SunRail Environmental Assessment (EA). Instead, that EA demonstrated that even if all freight remained on the “A Line” the SunRail project operating plan could be met. However, after the original EA was completed, FDOT made statements to the public and included information on its website that implied that the statewide freight program and commuter rail project were related to each other. Therefore, in 2008, FTA required FDOT to publish a Supplemental EA that included a general analysis of the impacts of moving freight to the “S Line”. Although the general analysis was published, FTA required neither an environmental analysis nor proposals for mitigation due to the fact that the projects were unrelated and no federal funding was involved in the freight improvement program.

Last week FDOT sent FTA a few sentences from the draft Master Project Agreement it is working on with CSX that implies again that the two projects are inter-related. The language states that revenue service for the SunRail project cannot proceed until the State has committed funding for and completed to FDOT and CSX’s satisfaction the list of freight rail improvements that are part of the statewide freight improvement program. We learned of this language through an email from FDOT in which they were seeking FTA’s input as to whether or not the language would impact our ability to move forward with an FFGA for SunRail. FTA told FDOT that we cannot comment in full on any proposed language in the agreement until we can see the entire agreement. FDOT said that they cannot provide FTA with a full draft of the agreement because the agreement is still in draft form. We will wait to see the full agreement before commenting in full, however, we would like to ask FDOT a question about the relationship of the projects in light of this new language.

For discussion:

- The New Starts team is proposing to remind FDOT that FTA has previously been told in writing by both FDOT and CSX that the SunRail project and the freight rail improvement program are unrelated. Because we have now received this draft language which implies they are inter-related, we wanted to ask FDOT to provide an explanation. We wanted to see if you have any objections to this proposal and also see if there is any information related to the FDOT-CSX-Amtrak discussions in which you have been engaged that might impact how we would respond to FDOT's inquiry.

Denver EAGLE Project -- New Starts Evaluation

As you know, RTD selected a concessionaire for the EAGLE project. Both the East and Gold Line New Starts projects are part of the EAGLE contract, but other non-federally funded work is included as well. The cost of the East and Gold Line corridors will be lower than the capital cost estimates RTD used for approval of the projects into final design. The concessionaire changed the scope of the projects a bit (single tracking along small portions of the alignment, the number of vehicles being purchased for the opening year is higher), but is meeting RTD's proposed operating plan. There were no changes to the number of stations or parking spaces along either alignment. The private equity contribution has not yet been finalized (financial close scheduled for this week), but it will likely be somewhat less than what RTD had assumed for entry into final design. These changes impact the New Starts rating of the projects.

For discussion:

- Since we agreed previously to move forward with a single FFGA rather than two separate FFGAs, RTD is hoping to submit only a single set of templates and materials to FTA showing the combined project cost and benefits. This would not allow FTA to rate the two corridors separately. Instead we would only be able to rate them as a single combined project. Our past practice has been to evaluate and rate each different corridor on its own rather than as a single combined project, however, there has been one recent exception to this practice (current Dallas North/Southeast FFGA). The Denver New Starts team believes as a benefit of being in the Penta P program, we should re-rate only the combined project. This will streamline the submittals required from RTD and is consistent with our earlier decision to move forward with a single FFGA. We would like to discuss whether you concur with this recommendation.

ARC Risk Assessment Update

We wanted to provide you with an update on (1) our meeting with staff from the offices of Senator Menendez and Senator Lautenberg and (2) the schedule for meeting with New Jersey Transit to review the risk assessment cost range and assumptions. We would also like to find out if you have any updates for us since we met last week.

Norfolk FFGA Update

The New Starts team will provide an update on a recent discussion with the Virginia Department of Rail and Public Transportation OIG on the project and potential additional funding sources

available to cover the cost increase and scope additions. We would like to discuss whether a formal letter should be sent to Congress notifying them of the cost increases.

September 9, 2010

ARC – risk assessment update, next steps and CMAQ grant

- FTA met with New Jersey Transit (NJT) on August 16th to present and discuss FTA's risk assessment cost range. On August 17th, NJT presented its own proposed cost range to FTA. The attached spreadsheet (which Brigid emailed to you on August 30th) shows the differences between the NJT range and the FTA range. We would like to discuss with you next steps for moving forward with the risk assessment process.
- You have a meeting with Tonio Burgess on Tuesday, September 14th, to discuss the FFGA for the ARC project. We are preparing a briefing paper and an updated FFGA roadmap in preparation for that meeting. We would like to know if there is other information that would be helpful to you in preparation for the meeting.
- NJT has submitted a request for a CMAQ grant for \$92.1 million. \$75 million of this \$92.1 million is for ARC; the remainder is for other projects. Of the \$75 million for ARC, \$20 million is for real estate and \$55 million is for tunnel contracts and professional services. In addition, NJT is requesting a budget revision to an already approved grant, to move \$13 million from professional services to real estate. We would like to discuss whether or not we should approve the \$92.1 million grant and also the \$13 million budget revision.

Orlando – pre-award authority for vehicle purchases and lapsing funds letter

Pre-Award Authority for Vehicle Purchases:

- FTA is preparing the third FONSI for the Orlando Commuter Rail project. It is expected that Yvette will sign it on Friday. Typically, we send the project sponsor a FONSI cover letter, which would include information about pre-award authority. FTA's current policy is that upon completion of NEPA, project sponsors have automatic pre-award authority for vehicle acquisition, utility relocation and right of way purchases. Thus, when Florida DOT receives the FONSI, they plan to award contracts for vehicle acquisition. The vehicle purchase presents some risk to the project sponsor because if the project does not go forward, they do not have an existing system in which to place these vehicles in service. They would have to find a buyer for the vehicles. We would like to discuss what we should say about pre-award authority for vehicle acquisition in the FONSI cover letter. We could include a warning about the risk of going forward with the vehicle purchase or we could preclude FDOT from exercising pre-award authority until the railroad agreements are fully executed with CSX and Amtrak.

Lapsing Funds Letter:

- You requested a letter to send to Joyce Rose on the lapsing funds issue. Attached is a draft letter. We would like to discuss with you if we should include a time limit for when these funds would be available to the project (e.g., within three years). This would limit FTA's risk in case the project is delayed indefinitely.

Dulles project – NEPA item

- The Metropolitan Washington Airports Authority (MWAA) sent a letter to TRO3 on Aug. 30th requesting that FTA take the lead in “updating” the environmental impact statement (EIS) for Phase 2 of the Dulles extension (from Reston to the airport), although MWAA is currently not seeking FTA funding for the extension at this time. MWAA would like to preserve its ability to seek future federal funding, including possibly a TIFIA loan. MWAA has met on two occasions recently with both FAA and FTA where this approach was discussed. They have asked for an FTA response by Sept. 15th.

The environmental update is necessary because MWAA is considering several design changes along the extension, including constructing the airport station above ground rather than underground as it was described in the original EIS/ROD. The original EIS covered both Phase I and Phase II. FTA was the lead agency on the Dulles Corridor EIS. FAA, which must approve any project on airport land, was a cooperating agency. FAA has not formally taken a position on MWAA's request to have FTA be the lead agency for the supplemental environmental work, although it is likely that FAA would endorse that request. The design changes are likely to be controversial, which we can discuss further with you.

There is a possibility that FAA will contact you in the future seeking your support for MWAA's request, at which time we could provide you with a more thorough briefing. However, in the meantime, we wanted to discuss this with you since FTA has received the letter from MWAA. If phase 2 becomes an FTA project for NEPA purposes (for example, through MWAA's application for a TIFIA loan or a decision to use FTA formula funds in the project), or if FAA formally requests that FTA take the lead, then FTA would be the logical Federal lead agency under the NEPA implementing regulations (40 C.F.R. § 1501.5(c)).

INFORMATION ITEMS

Sacramento South Corridor Phase 2 – status update on recent financial submittal from project sponsor

- On July 20th, FTA received a revised financial plan, support documentation, and other materials that, according to the Sacramento RT, addresses FTA's previous comments.

On August 24, FTA sent the RT specific questions and concerns about the submittal. On September 1st, FTA held a conference call to discuss the updated financial plan. Based upon the input received during the call, the Sacramento RT plans to submit a better organized, more complete financial plan for the FY 2012 Annual Report. After it is reviewed by FTA staff, we will send it to our FMO contractor for evaluation and rating. The Sacramento RT may have gained a sufficient level of committed capital and operating committed for approval into final design. Additionally, the financial plan assumptions appear to be based on more realistic assumptions, although we still need to review those further. The rating for Local Financial Commitment may improve upon our review of the updated materials that we expect to receive from the RT.

Austin, MetroRapid BRT – PCGA schedule

- FTA received and is reviewing the PCGA application for the proposed 37.5-mile BRT Very Small Starts project. The team is working with the project sponsor on finalizing all of the PCGA contract documents and attachments. The current schedule assumes the package will be approved by FTA EMT and reach TOA by the end of this month. The schedule then assume OST/OMB review in October, then to Congress by early November for the 60-day review. Execution of the PCGA would happen in early January, unless OST/OMB review takes less time than anticipated.

Minneapolis LONP request #5 – for systems contract

- On September 3, the Met Council submitted a request for a fifth LONP to cover work under a limited notice to proceed on the systems contract (incomplete draft requests had been received). The work will consist of mobilization, shop drawing preparation, and work related to installation of equipment at the Franklin Avenue Rail Operations and Maintenance Facility Rail Control Center (RCC) in an amount of \$7.7 million. The MC plans to award the systems contract on Sept 22, 2010, with the limited notice to proceed issued in October. Receipt of an LONP will enable the MC to avoid potential schedule delays and cost impacts. The New Starts team is reviewing the LONP request and developing an approval package for review and approval.

San Francisco Central Subway LONP Request:

- We received an LONP request for \$6.9 million from the San Francisco Metropolitan Transportation Authority (SFMTA) for a temporary trolley reroute and jet grouting at one of the station sites. The contract award date is several months away, but SFMTA is hoping to receive the LONP by the end of September or early October. We will provide you with a briefing on this LONP at the next bi-weekly meeting.

October 21, 2010

Honolulu High Capacity Transit Corridor Project: NEPA and Precast Yard(s)

The Honolulu project will be constructed in four contract segments. According to the project sponsor, the design-build contract signed in December 2009 with Kiewit for the initial West Oahu Farrington segment provided Kiewit discretion on where to site a precast yard (where concrete posts are fabricated that are needed to support the aerial guideway.) According to the project sponsor, Kiewit is responsible for acquiring all necessary agreements and permits needed for any precast yards. Several months ago, Kiewit initiated a review under the State (not Federal) environmental process for a 30-acre precast yard located on former military land on Oahu. The proposed site had not been included as part of the project scope in the FEIS.

Ideally, the FEIS should include a review of the entire project scope, including precast yards, to avoid potential issues of “segmentation.” Since learning of this issue, FTA has repeatedly asked the City for additional information about all of the precast yard sites that might be used for the project, but the City has resisted providing information on the grounds that the precast yard site selection is the responsibility of the contractors. Yesterday, FTA finally received some information from the City, albeit limited, that provides a summary of potential environmental impacts associated with locating the precast yard at two potential sites: the alternative maintenance and storage facility site and the former military site proposed by Kiewit.

The New Starts team proposes three options for moving forward with the NEPA review for your consideration. The first two options could possibly delay the date that a Record of Decision (ROD) could be issued for the project. The earliest the ROD could be issued is December 6th, and then only if the new Governor will immediately sign off on the State FEIS upon taking office. According to TCC, Options 1 and 2 below are recommended since they would have the lowest risk of litigation due to potential segmentation issues.

- **Option One: Review of Two or More Potential Precast Yard Sites Prior to the ROD**
This option would involve conducting a supplemental environmental document, likely an Environmental Assessment (EA), on two or more potential sites prior to the issuance of the ROD. Under this option, the City could select a preferred site either as part of the supplemental environmental document or after the supplemental environmental document is completed. Time to complete: 2-3 months
- **Option Two: Review of One Selected Site Prior to the ROD**
This option would involve performing an environmental review of a selected site for the precast yard prior to the issuance of the ROD. If the City selects the alternative maintenance and storage facility (MSF) site as the preferred site, the environmental review could be conducted as an internal evaluation incorporated in the ROD. This is because the impacts of the MSF site have already been reviewed in the FEIS. If the City selects the existing industrial facility on Oahu that was advertised by Kiewit, a supplemental environmental document, likely an Environmental Assessment, would need to be completed, similar to Option 1. Time to complete: 30 days if MSF site; 2-3 months if industrial site advertised by Kiewit
- **Option Three: Review of Selected Site After the ROD**

This option would involve conducting a review after the ROD is issued. Time to complete: 2-3 months

Columbia River Crossing

For the FY12 Annual Report, Washington State DOT (WSDOT) submitted updated information for the Columbia River Crossing (CRC) Project. The capital cost of the transit portion of the project went down from \$945 million to \$931.7 million, and the total multimodal project cost changed from \$4.096 billion to \$3.565 billion. The New Starts share changed from \$750 million to \$850 million. Recall that Section 173 of the FY 2010 Transportation, Housing and Urban Development Appropriations Act directs FTA to base the New Starts share rating for interstate, multi-modal projects located in an interstate highway corridor on the unified finance plan for the multi-modal project rather than only on the transit element of the plan. Thus, an \$850 million New Starts share would equate to 24% of the entire multimodal project. The New Starts team would like your feedback on the total amount of New Starts dollars assumed and whether the program can sustain such a high number.

Portland-Milwaukie Light Rail Project

Tri-Met obtained additional non-federal funding commitments and submitted a series of proposed scope reductions in response to FTA's decision to cap the New Starts share for the Portland-Milwaukie Light Rail (PMLR) Project at 50%. FTA has approved publication of the FEIS, and the Record of Decision (ROD) is expected to be executed in early December. Tri-Met intends to submit a Letter of No Prejudice (LONP) immediately following issuance of the ROD in December, that would cover a portion of the bridge design-build contract so that the construction in the river can commence during the endangered species "fish window" over the summer. The LONP request would precede the project's approval into final design, which is currently estimated to occur in February 2011. The New Starts team would like to give feedback to TriMet on our willingness to entertain this LONP request prior to final design.

Central Corridor LRT – internal borrowing

The Met Council's financial plan assumes internal borrowing to finance delays in receipt of funding from state, regional and local funding partners. However, the cash flow projection demonstrates that Metro Transit (an operating unit of Met Council) has sufficient cash balances through the construction period to fund state and local funding delays. The Met Council is expecting to get reimbursed through the FFGA for interest charges on this internal borrowing. FTA has not previously reimbursed project sponsors for internal borrowing and instead typically only reimburses for third party borrowing. Resolution of this issue is one of the only remaining items needed to process the FFGA. The New Starts team would like to know whether we should allow the internal borrowing interest charges or require the Met Council to remove the interest charges from the FFGA baseline cost estimate.

Information item

El Paso, TX small starts project development approval will occur in the near future

Procedures for Urban Circulator Projects

ISSUE

TPE proposes to use different procedures for advancing the six Urban Circulator projects that will receive unallocated New Starts funds than we have applied to 5309 Major Transit Investment projects that received “exempt”-level (less than \$25 M) New Starts funding in the past. This action would have precedence for future discretionary funding actions. It may also raise questions from the several projects now in the pipeline that are subject to FTA’s traditional “exempt” project requirements (e.g., Boston Assembly Square and Tucson Modern Streetcar). If you agree, TPE will issue a Federal Register Notice (FRN) on the Urban Circulator projects reflecting that they are not subject to traditional "exempt" review and approval practices.

BACKGROUND

The December 8, 2009 Federal Register Notice (FRN) announcing the availability of funds for the Urban Circulator program states: “Consistent with Section 5309(e)(1)(B), projects receiving less than \$25,000,000 in Federal assistance with respect to a new fixed guideway capital project are considered exempt from certain requirements of the program.” The FRN further states that selected applicants would “. . . adhere to the customary FTA grant requirements of the Section 5309 Major Capital Investment program” It has been FTA’s practice to approve each exempt project into preliminary engineering (PE) and final design (FD) prior to the award of a grant for construction, although the rigor of the review and approval process is considerably less than applied to New and Small Starts projects. The selected Urban Circulator projects were publicized on July 7. TPE prepared a draft FRN indicating that these projects would be subject to the traditional exempt procedures for New and Small Starts projects.

Subsequently, you questioned the need to use the traditional review and approval procedures for the Urban Circulator projects. TCC (Scott Biehl) has advised TPE that in his view the text of Section 5309, in itself, does not require exempt projects to follow these traditional procedures. Scott explained the existing practice by noting that "the Administrator, in his discretion, may dictate such an approach, consistent with his authority to impose 'all terms, conditions, requirements, and provisions' he deems 'necessary or appropriate' for carrying out the New Starts program. 49 U.S.C. § 5309(c)(3)." Scott further admonished that the Regions will need to carefully define the scope of the work for these projects in the grant awards to avoid "dumb grants."

In light of TCC’s interpretation, as well as the need for these projects to initiate construction within 18 months of the July 7th announcement and for FTA to obligate the funds by September 30, 2012, TPE has prepared another draft FRN stating that the Section 5309 Urban Circulator grants will be administered and managed by the FTA Regional Offices—with no mention of any exempt project requirements. The Urban Circulator projects will be advanced similar to Section 5307 projects and Section 5309 bus projects. The FTA Regional Offices will handle the projects, determining if the projects are in compliance with planning, environmental, and project management requirements which apply to all Federal-aid transit projects.